

Amendment No. 1 to SB1500

Gardenhire
Signature of Sponsor

AMEND Senate Bill No. 1500

House Bill No. 1002*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 40-30-114, is amended by adding the following as a new subsection:

(c)

(1) In cases where a defendant has been sentenced to death and is seeking collateral review of a conviction or sentence, the attorney general and reporter has exclusive control over the state's defense of the request for collateral review and has all of the authority and discretion that the district attorney general would have in non-capital cases as well as any additional authority provided by law. The attorney general and reporter is not bound by any stipulations, concessions, or other agreements made by the district attorney general related to a request for collateral review.

(2) The trial court lacks jurisdiction to enter a final order granting relief on a request for collateral review outlined in subdivision (c)(1) until the attorney general and reporter files a response to the request.

(3) It is the duty and function of the district attorney general, and the district attorney general's staff, to lend whatever assistance may be necessary to the attorney general and reporter in the trial and disposition of requests for collateral review outlined in subdivision (c)(1), including, but not limited to, providing the attorney general and reporter with the district attorney general's case file and any other case-related material.

(4) As used in this subsection (c), "collateral review":

(A) Means any proceeding under this chapter, including a petition requesting analysis of evidence, a proceeding under § 39-13-203(g), a proceeding under § 40-26-105, a proceeding involving a challenge to a capital inmate's competency to be executed, and any other judicial reexamination of a judgment or claim in a proceeding outside of the direct review process; and

(B) When a defendant has been sentenced to death after March 1, 2023, does not mean the trial of an original petition for post-conviction relief as authorized by § 40-30-104. All other proceedings involving a defendant who has been sentenced to death after March 1, 2023, including reopened post-conviction proceedings granted under § 40-30-117 must be conducted in conformity with subdivision (c)(1).

SECTION 2. Tennessee Code Annotated, Section 40-30-114, is amended by deleting subsection (a) and substituting:

(a) The district attorney general or the attorney general and reporter must be reimbursed for any expenses, including travel, incurred in connection with the preparation and trial of any proceeding under this part. This expense must be paid by the state and is not included in the expense allowance now received by the various district attorneys general or the attorney general and reporter.

SECTION 3. Tennessee Code Annotated, Section 40-30-108, is amended by deleting subsection (a) and substituting:

(a) The district attorney general shall represent the state except as provided in § 40-30-114(c). The state shall file an answer or other responsive pleading within thirty (30) days, unless extended for good cause. Good cause will not be met by a routine statement that the press of other business prevents a response within the thirty-day

period. Failure by the state to timely respond does not entitle the petitioner to relief under the Post-Conviction Procedure Act.

SECTION 4. Tennessee Code Annotated, Section 39-13-203, is amended by deleting subdivision (g)(1) and substituting:

(g)

(1) A defendant who has been sentenced to the death penalty prior to the effective date of this act and whose conviction is final on direct review may petition the trial court for a determination of whether the defendant is intellectually disabled. The motion must set forth a colorable claim that the defendant is ineligible for the death penalty due to intellectual disability. A defendant filing a motion under this subsection shall serve the attorney general and reporter, who will represent the state. Either party may appeal the trial court's decision in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure.

SECTION 5. Tennessee Code Annotated, Section 40-26-105, is amended by deleting subsection (a) and substituting:

(a) There is made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error coram nobis, to be governed by the same rules and procedures applicable to the writ of error coram nobis in civil cases, except insofar as inconsistent herewith. Notice of the suing out of the writ shall be served on the district attorney general except in cases where a defendant has been sentenced to death, where notice shall be served on the attorney general and reporter. A judge does not have authority to order the writ to operate as a supersedeas. The court has authority to order the person having custody of the petitioner to produce the petitioner in court for the hearing of the proceeding.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it, and applies to all currently pending, reopened, and future requests for collateral review.